

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

OCT 23 3 55 PM '92

MM Docket No. 92-227

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Eatonton, Fayetteville,
Greenville, Griffin,
Hogansville, Sparta and
Thomaston, Georgia,
and Ashland, Alabama)

RM-8070
RM-8072

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: September 24, 1992; Released: October 23, 1992

Comment Date: December 14, 1992

Reply Comment Date: December 29, 1992

By the Chief, Allocations Branch:

1. The Commission has before it for consideration two separately filed, conflicting petitions for rule making. The first petition, filed by Orchon Broadcasting Company ("Orchon"), requests the substitution of Channel 239C3 for Channel 239A at Greenville, Georgia, and the modification of its construction permit for Station WEJG(FM) to specify operation on the higher class channel (RM-8070). The second petition was filed by Good Medicine Radio, Georgia, Inc. ("GMR"), licensee of Station WSKS(FM), Channel 249A, Sparta, Georgia, and Design Media, Inc. ("DMI"), licensee of Station WQUL(FM), Channel 249A, Griffin, Georgia (jointly referred to as "petitioners"). Petitioners propose the substitution of Channel 249C3 for Channel 249A at Sparta and the reallocation of the channel to Eatonton, Georgia; the substitution of Channel 248C3 for Channel 249A at Griffin and the reallocation of the channel to Fayetteville, Georgia, and the modification of the licenses of Stations WSKS(FM) and WQUL(FM) to specify Eatonton and Fayetteville, respectively as their communities of license. In order to accommodate these proposals, petitioners also request the substitution of Channel 239A for Channel 248A at Hogansville, Georgia, and the modification of Station WEIZ(FM)'s construction permit to specify Channel 239A; the substitution of Channel 237A for Channel 239A at Greenville, Georgia, and the modification of Station WEJG(FM)'s construction permit to specify Channel 237A; the substitution of Channel 266A for Channel 237A at Thomaston, Georgia, and the modi-

Station WTGA(FM)'s license to specify Channel 266A; and the substitution of Channel 238A for Channel 237A at Ashland, Alabama, and the modification of Station WASZ(FM)'s license to specify Channel 238A (RM-8072). Petitioners each state an intention to apply for the respective channel, if allotted. Orchon's proposal to substitute Channel 239C3 for Channel 239A at Greenville and petitioner's proposal to substitute Channel 237A for Channel 239A at Greenville are mutually exclusive.

2. GMR and DMI seek to invoke the provisions of Section 1.420(i) of the Commission's Rules. GMR states that the use of Channel 249A at Sparta and Channel 249C3 at Eatonton is mutually exclusive. GMR notes that the reallocation of the channel from Sparta (population 1,710)¹ to Eatonton (population 4,737) will provide Eatonton with its first full-time local transmission service, while Sparta will continue to be served by Station WHAN(FM).² GMR states that Eatonton is an incorporated city with a mayor, city council, volunteer fire department, numerous businesses, financial institutions and residential areas in the city. Eatonton has a variety of civic organizations such as a Lions Club, Mason Lodge and Elks Club. The city provides its own police protection and has its own post office. GMR claims that the requested reallocation and upgrade of Station WSKS(FM) at Eatonton will serve 83,989 persons in 4,759.5 square kilometers, which represents an increase of 55,466 persons and 2,929.6 square kilometers over the present facility.

3. DMI notes that the use of Channel 249A at Griffin and Channel 248C3 at Fayetteville is mutually exclusive. DMI argues that the reallocation of the channel from Griffin (population 21,347) to Fayetteville (population 5,827) will provide Fayetteville with its first local transmission service, while Griffin will continue to receive service from Stations WHIE(AM) and WKEU(AM). DMI states that neither community is located within an Urbanized area. DMI states that Fayetteville is an incorporated city with a mayor, city, post office, banks and numerous businesses. The city provides its own fire and police services, separate from county services. DMI claims the requested reallocation and upgrade of Station WQUL at Fayetteville will serve 867,736 persons in 4,782.3 square kilometers, which is an increase of 744,796 persons and 2,445.4 square kilometers over the present facility.

4. In further support of their proposal, petitioners claim that the proposed Class A channel substitutions will enable the Hogansville and Thomaston stations to operate as 6 kilowatt facilities. Specifically, petitioners maintain that Station WEIZ, Hogansville, Georgia, will be able to serve 68,589 persons in 2,497.8 square kilometers, an increase of 9,113 persons and 670.6 square kilometers over its present facility. Station WASZ, Thomaston, Georgia, will be able to serve 20,376 persons in 2,275.3 square kilometers, which represents an increase of 7,108 persons in 612 kilometers over its present facility.

5. An engineering analysis has confirmed that all aspects of both proposals comply with the Commission's minimum distance separation requirements. Channel 239C3 can be allotted to Greenville with a site restriction 13.8 kilometers (8.6 miles) west of the community. Conversely, Channel 237A can be substituted for Channel 239A at

Eatonton.

¹ Population figures are taken from the 1990 U.S. Census.

² Station WKVQ(AM), a daytime-only station, is licensed to

Greenville at the construction permit site.³ Channel 249C3 can be reallocated to Eatonton with a site restriction of 8.6 kilometers (5.4 miles) northeast of the community,⁴ in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia, and to avoid a short-spacing to a construction permit for Station WKXK(FM), Channel 250C3, Fort Valley, Georgia. Channel 248C3 can be reallocated to Fayetteville with a site restriction of 2.7 kilometers (1.7 miles) southwest,⁵ in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia. Channel 239A can be allotted to Hogansville in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.5 kilometers (7.1 miles) southwest,⁶ in order to avoid a short-spacing to Station WKLS, Channel 241C, Atlanta, Georgia. Channel 266A can be allotted to Thomaston in compliance with the Commission's minimum distance separation requirements with a site restriction 5.7 kilometers (3.5 miles) west,⁷ in order to avoid a short-spacing to Station WPGA(FM), Channel 265A, Perry, Georgia, and Station WCJM(FM), Channel 265A, West Point, Georgia. Channel 238A can be allotted to Ashland in compliance with the Commission's minimum distance separation requirements at its currently licensed site.⁸

6. We believe the public interest would be served by seeking comments on these proposals. In order to make a determination as to which proposal would better serve the public interest, we shall provide the proponents an opportunity to demonstrate in comments why their respective proposals should be preferred. In this regard, the parties should be guided by the allotment criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), as follows:

- (1) first fulltime aural service;
 - (2) second fulltime aural service;
 - (3) first local service;
 - (4) Other public interest matters;
- [Co-equal weight is given to priorities (2) and (3)].

Additionally, Orchon should submit a gain area study showing the population and square kilometers of the increased area to be served by its proposal. See *Greenup, Kentucky, and Athens, Ohio*, 6 FCC Rcd 1493 (1991), for the methodology to be applied to the studies.

7. We shall propose to modify the license of Station WEJG(FM), Greenville, to specify operation on Channel 239C3, in accordance with Section 1.420(g) of the Commission's Rules, without entertaining other expressions of interest or requiring the party to demonstrate the availability of an additional equivalent channel for use by any such interested parties. Alternatively, we shall propose to modify the license of Station WSKS(FM), Sparta, and Station WQUL(FM), Griffin, to specify operation on Channel 249C3 at Eatonton and Channel 248C3 at Fayetteville,

respectively. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of the channels or require the petitioner's to demonstrate the availability of an additional equivalent class channel for use by such parties.

8. In recognition of the Commission's policy concerning the involuntary relocation of an authorized transmitter site, GMR and DMI have provided copies of agreements with T. Wood and Associates, Inc., permittee for Station WEIZ(FM) and WTGA, Radio Georgia, Inc., licensee of Station WTGA(FM) consenting to a change in their authorized transmitter sites, as well as the proposed change in channels of operation, to accommodate the modification of Stations WSKS(FM) and WQUL(FM). GMR and DMI has stated their willingness to reimburse the permittee of Station WEIZ(FM) and the licensee of WTGA(FM) for reasonable expenses incurred in relocating to Channel 239A and Channel 266A respectively.

9. We are also issuing *Show Cause Orders* to Orchon, the permittee of Station WEJG(FM), Greenville, and Perry Communications, Inc., licensee of Station WASZ, Ashland, seeking comments as to why each authorization should not be modified to specify operation on Channel 237A and Channel 238A, respectively. Whenever an existing licensee or permittee is ordered to switch channels in order to accommodate a new allotment, we require the proponent of the new allotment to make a commitment that it will reimburse the licensee or permittee for reasonable and prudent expenses incurred by the change of channels. GMR and DMI has indicated its willingness to reimburse the permittee of Station WEJG(FM) for the reasonable and prudent costs of changing frequency. In addition, GMR and DMI are requested to state in comments their intentions of reimbursing the licensee of Station WASZ(FM), Ashland, Alabama, for the reasonable cost of changing its frequency at Ashland.

10. Although an *Order to Show Cause* to T. Wood and Associates, Inc., and WTGA, Radio Georgia, Inc., is not required in view of their agreement and consent to GMR and DMI modification request, we will serve them with a copy of this *Notice*.

11. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

³ The coordinates for Channel 239C3 at Greenville are North Latitude 33-01-39 and West Longitude 84-51-39. The coordinates for Channel 237A at Greenville are North Latitude 32-54-00 and West Longitude 84-46-54.

⁴ The coordinates for Channel 249C3 at Eatonton are North Latitude 33-23-03 and West Longitude 83-19-22.

⁵ The coordinates for Channel 248C3 at Fayetteville are North Latitude 33-25-42 and West Longitude 84-28-22. We note the possibility of interference to the FCC Monitoring Station at

Powder Springs, Georgia. Therefore, if Channel 248C3 is reallocated to Fayetteville, Georgia, the licensee will be required to provide protection to the monitoring station.

⁶ The coordinates for Channel 239A at Hogansville are North Latitude 33-06-18 and West Longitude 85-00-27.

⁷ The coordinates for Channel 266A at Thomaston are North Latitude 32-54-08 and West Longitude 84-23-13.

⁸ The coordinates for Channel 238A at Ashland are North Latitude 33-18-30 and West Longitude 85-50-58.

City	Present	Channel No.	Proposed
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OPTION I

Greenville, Georgia	239A		239C3
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OPTION II

Ashland, Alabama	237A		238A
Eatonton, Georgia	--		249C3
Fayetteville, Georgia	--		248C3
Greenville, Georgia	239A		237A
Griffin, Georgia	249A		--
Hogansville, Georgia	248A		239A
Sparta, Georgia	249A, 274A		274A
Thomaston, Georgia	237A		266A

12. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Orchon Broadcasting Company, Inc., permittee of Station WEJG(FM), Channel 239A, Greenville, Georgia, SHALL SHOW CAUSE why its permit should not be modified to specify operation on Channel 237A in lieu of Channel 239A and Perry Communications, Inc., licensee of Station WASZ(FM), Channel 237A, Ashland, Alabama, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 266A in lieu of Channel 237A.

13. Pursuant to Section 1.87 of the Commission's Rules, Orchon Broadcasting Company, Inc., and Perry Communications, Inc., may, not later than **December 14, 1992**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Orchon Broadcasting Company, Inc., or Perry Communications Inc., to furnish additional information. If Orchon Broadcasting Company, Inc. or Perry Communications, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Orchon Broadcasting Company, Inc., or Perry Communications, Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

14. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Radio Georgia, Inc.
Station WTGA(FM)
208 S. Center St.
Thomaston, GA 30286

T. Wood and
Associates, Inc.
Station WEIZ(FM)
Box 1114
LaGrange, GA 30240

WASZ
Box 395
Ashland, AL 36251

Orchon Broadcasting
Company, Inc.
219 Stonehaven Drive
Newnan, GA 30265

15. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

16. Interested parties may file comments on or before **December 14, 1992**, and reply comments on or before **December 29, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Dan J. Alpert
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Ave., N.W.
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(Counsel for Good
Medicine Radio,
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(Attorney for
Orchon Broadcasting
Company, Inc.)

17. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

18. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served

on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be

served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.